

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Ron Ottenbacher,
Appellant,

v.

Polk County Board of Review,
Appellee.

ORDER

Docket No. 14-77-0292
Parcel No. 100/00180-000-000

On December 19, 2014, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) (2013) and Iowa Administrative Code rules 701-71.21(1) et al. Appellant Ron Ottenbacher was self-represented and participated by telephone. Assistant Polk County Attorney David Hibbard represented the Board of Review. The Appeal Board now, having examined the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

Ron Ottenbacher, representative for Morgan Ottenbacher, owner of property located at 1325 33rd Street, Des Moines, Iowa, appeals from the Polk County Board of Review decision reassessing her property. According to the property record card, the subject property consists of a one-and-one-half-story, single-family dwelling with 1189 square feet of living area; a partial, unfinished basement; a deck; and an enclosed porch built in 1919. It also has a 352 square-foot detached garage built in 1965. The dwelling has an average quality grade (4-05) and is listed in above-normal condition. Its site is 0.164-acres.

The real estate was classified residential on the initial assessment of January 1, 2014, and valued at \$90,800, representing \$14,900 in land value and \$75,900 in improvement value. This was a change from the 2013 assessment making it a reassessment year with all grounds of protest available.

Ottensbacher protested to the Board of Review on the grounds that the assessments were not equitable compared to like properties in the taxing jurisdiction and that the property was assessed for more than the value authorized by law under Iowa Code sections 441.37(1)(a)(1)(a) and (b). The Board of Review denied the protest.

Ottensbacher then filed his appeal with this Board and urged the same grounds. He claims \$75,000 is the actual value and fair assessment of the subject property.

Ottensbacher's daughter purchased the dwelling in September 2012 for \$20,100 from Housing & Urban Development (HUD) after a foreclosure. No appraisal was done for the purchase. He stressed the property was listed by a realtor and purchased from unrelated parties, not family or an estate. Nonetheless, we find that the sale was an abnormal transaction and, without adjustment to account for that fact, does not reflect the subject's market value.

Ottensbacher testified he is familiar with the area and his three children all live within four blocks of the subject. He testified he has purchased four other properties within four blocks of the subject property in 2013 and 2014. He reports these are superior to the subject because of living area, condition, or updating, yet they were all purchased in the \$30,000 to \$75,000 range. Ottensbacher believes the purchase price is evidence of the subject property's fair market value after the financial crisis. In his opinion, it was worth roughly \$75,000 before the economic recession. Ottensbacher did not submit any documentary evidence concerning these properties, such as property record cards, for this Board to evaluate their comparability to the subject property or confirm these sales. As a result, we cannot conclude whether the properties are, in fact, comparable and therefore we give these sales no consideration.

Ottensbacher estimates \$3000 worth of repairs were done to the subject property after the purchase. The interior was remodeled and repainted, flooring and vinyl was replaced, some windows were replaced, kitchen cabinets were replaced, central air conditioning was installed, and a deck was

added. Ottenbacher reported that the house was inspected for the 2013 protest after the repairs. As a result of the inspection, the condition was upgraded to above-normal. Ottenbacher did not submit any information to substantiate the repairs made and the cost thereof. It appears the remodeling and repairs were extensive and we question whether \$3000 is an accurate reflection of their cost.

Ottenbacher identified four properties located near the subject property on 33rd Street. None of the properties had upper living area, all were below-average quality (5+00 to 5+10), three were in normal condition as opposed to the subject's above-normal condition, and some lack garages. Market-adjusted cost adjustments made by the Assessor's office indicate these differences amount to between a \$15,000 and \$37,900 variance in assessed value. Based on these characteristics, we find that these properties are not comparable to the subject. Even if they were, there is no indication any were recent sales and it appears only assessments were adjusted, which is not an accepted valuation method to determine market value.

The Board of Review submitted eight recent sales it considered comparable. These sales included one-and-one-half-story homes of similar age with between 1000 and 1200 square feet of living area within two miles of Districts 100 and 180. (Exhibit A). Five of the sales occurred in 2014 after the assessment date. Three homes sold in 2013, however, none of them are in the subject property's DM55 neighborhood. The 2013 sale prices ranged from \$55,000 to \$128,000, or \$47.66 to \$110.63 per-square-foot. The subject property is currently assessed at \$76.37 per-square-foot and falls within this range. It appears the assessed values were adjusted based on market-adjusted cost data. Because the sale prices were not adjusted to account for differences between the comparable properties and the subject property, we give this evidence no consideration.

Conclusions of Law

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. This Board is an agency and the provisions of the Administrative Procedure Act apply.

Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review, but considers only those grounds presented to or considered by the Board of Review. §§ 441.37A(3)(a); 441.37A(1)(b). New or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption the assessed value is correct. § 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(b). Market value essentially is defined as the value established in an arm's-length sale of the property. *Id.* Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available to determine market value then "other factors," such as income and/or cost, may be considered. § 441.21(2).

To prove inequity, a taxpayer may show that an assessor did not apply an assessing method uniformly to similarly situated or comparable properties. *Eagle Food Centers v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860, 865 (Iowa 1993). Alternatively, a taxpayer may show the property is assessed higher proportionately than other like property using criteria set forth in *Maxwell v. Shivers*, 133 N.W.2d 709 (Iowa 1965). The six criteria include evidence showing

"(1) that there are several other properties within a reasonable area similar and comparable . . . (2) the amount of the assessments on those properties, (3) the actual value of the comparable properties, (4) the actual value of the [subject] property, (5) the assessment complained of, and (6) that by a comparison [the] property is assessed at a higher proportion of its actual value than the ratio existing between the assessed and the actual valuations of the similar and comparable properties, thus creating a discrimination."

Id. at 711. The *Maxwell* test provides that inequity exists when, after considering the actual and assessed values of comparable properties, the subject property is assessed at a higher proportion of this actual value. *Id.* The *Maxwell* test may have limited applicability now that current Iowa law requires assessments to be at one hundred percent of market value. § 441.21(1). Nevertheless, in some rare instances, the test may be satisfied.

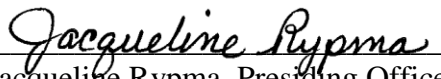
Ottenbacher listed four properties for equity comparison. He provided the street address and the assessed value of each, but we found these properties were not comparable to the subject and it was unclear if any had recently sold. It is necessary to have recent sales and assessment data for comparable properties to develop an assessment/sales ratio or to complete the equity analysis contemplated by *Maxwell*. The Board of Review did provide evidence to develop an assessment/sales ratio, however, the only sale price for the subject property is dated and the sale price reflects abnormal sale conditions. Ottenbacher did not prove by a preponderance of the evidence that the property is inequitably assessed under either the *Eagle Food* or *Maxwell* tests.

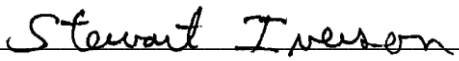
In an appeal alleging the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(2), the taxpayer must show: 1) the assessment is excessive and 2) the subject property's correct value. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). Ottenbacher did not provide evidence to show the fair market value of the property such as an appraisal, comprehensive market analysis, or adjusted comparable sales data. Although he testified to his recent purchases of allegedly comparable properties in the area, he did not submit any evidence from which this Board can evaluate their comparability or verify the sales data.

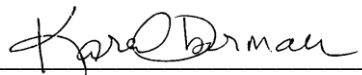
Ultimately, Ottenbacher's evidence did not show the property was inequitably assessed and did not establish the fair market value of the property as of January 1, 2014. Therefore, we find a preponderance of the evidence does not prove the subject property is inequitably assessed or over-assessed.

THE APPEAL BOARD ORDERS that the January 1, 2014, assessment as determined by the Polk County Board of Review is affirmed.

Dated this 10th day of February, 2015.


Jacqueline Rypma, Presiding Officer


Stewart Iverson, Board Chair


Karen Oberman, Board Member

Copies to:
Ron Ottenbacher
2001 Rose Creek Drive
Fargo, ND 58104
REPRESENTATIVE FOR APPELLANT

David Hibbard
Assistant Polk County Attorney
111 Court Avenue, Room 340
Des Moines, IA 50309-2218
ATTORNEY FOR APPELLEE